

_____ **Division¹**

Name: vs. United States of America	BOP No.:	Cause No. : CR _____
Place of Confinement and Mailing Address:		

- (1) Use this form only if you intend to challenge a conviction or sentence entered in the United States District Court for the District of Montana. There is no filing fee. If you cannot pay certain costs of this motion, such as attorney fees, transcript costs, or any fee for filing an appeal, you may move to proceed in forma pauperis. You may do so at any stage of the proceedings. A form is available on request. **If you had court-appointed counsel in your criminal case, you do not need to reapply to proceed in forma pauperis in the District Court.**
- (2) Your motion must be typed or legibly handwritten. You must answer all the questions. You must tell the truth. You must sign the form under penalty of perjury or, if you are represented by counsel, counsel must sign the motion.
- (3) Additional pages are not permitted except with respect to grounds for relief and the facts you rely on to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted separately in the form of a brief in support of the motion. *Do not insert additional grounds for relief in your brief.*
- (4) Only judgments entered in one case or in consolidated cases may be challenged in a single motion. If you seek to challenge judgments entered in more than one case and those cases were not consolidated, you must file separate motions as to each case.
- (5) The Court may determine your claims solely on the basis of what is in the motion. Therefore, you must include

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in the motion all grounds for relief you want the Court to review and all facts supporting such grounds for relief.

- (6) When you complete your motion, mail the original (no copies are required) to the Clerk of the United States District Court in the Division where your conviction(s) arose:

Billings Division: Clerk of U.S. District Court, 316 N. 26th, Room 5405, Billings, MT 59101

Butte Division: Clerk of U.S. District Court, 400 N. Main St., Federal Bldg. Rm. 303, Butte, MT 59701

Great Falls Division: Clerk of U.S. District Court, 215 1st Ave. North, P.O. Box 2186, Great Falls, MT 59403

Helena Division: Clerk of U.S. District Court, 901 Front St., Ste 2100, Helena, MT 59626

Missoula Division: Clerk of the U.S. District Court, 201 E. Broadway, P.O. Box 8537, Missoula, MT 59807

Motion to Vacate, Set Aside, or Correct the Sentence Under 28 U.S.C. § 2255

1. Date written judgment was entered:
2. What sentence was imposed?
3. Nature of offense involved (all counts):
4. What was your plea?
 - (a) Not guilty ☐
 - (b) Guilty ☐
 - (c) Nolo contendere or *Alford* ☐

If you pleaded guilty, nolo contendere, or entered an *Alford* plea on all counts, or if you entered such a plea on one or more counts and all other counts were dismissed, go to Number 7. If you entered a guilty plea to any count(s) and maintained a not guilty plea to any other count(s), give details:

5. If you pleaded not guilty, what kind of trial did you have?
Jury ☐
Judge only ☐
6. If you pleaded not guilty, did you testify at the trial?
Yes ☐
No ☐
7. Did you appeal to the Ninth Circuit Court of Appeals?
Yes ☐
No ☐ (if No, go to Number 9)

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(a) If Yes, grounds raised:

(b) Result, date of result, and citation if known:

(c) Were you represented by counsel?

Yes ☐

No ☐

(d) Did counsel file an *Anders* brief or tell the Court of Appeals that there was no non-frivolous issue to appeal?

Yes ☐

No ☐

8. Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐

No ☐ (if No, go to Number 9)

(a) If Yes, date filed:

(b) Result, date, and citation if known:

9. Have you previously filed or have you ever been deemed to have filed a motion under § 2255 in this case?

Yes ☐

No ☐ (if No, go to Number 10)

(a) If Yes, have you received authorization from the Ninth Circuit Court of Appeals to file a second or successive motion?

Yes ☐

No ☐

(b) Date authorization received:

(c) Ninth Circuit case number:

Please attach a copy of the Ninth Circuit's order.

10. Have you previously filed in any federal court any petition for writ of habeas corpus relating to the sentence you challenge in this motion?

Yes ☐

No ☐ (if No, go to Number 11)

(a) If Yes, date filed:

(b) Name of court where petition was filed and case number:

(c) Grounds raised in your petition:

(d) Court's decision and date:

11. Have you previously filed with the Bureau of Prisons any request related to the execution of the sentence you challenge in this motion?

Yes ☐

No ☐ (if No, go to Number 12)

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(a) If Yes, nature of your request:

(b) Grounds raised:

(c) Result, date of decision, and job title of the person who made the decision:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional facts and/or grounds for relief. CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date. Additionally, a one-year statute of limitations applies to your case. *See* 28 U.S.C. § 2255 para. 6.

A. Ground One: _____

(1) Supporting FACTS (state briefly without citing cases or law): _____

(2) Did you raise this ground for relief in your direct appeal?

Yes ☐

No ☐

If Yes, why should the Court of Appeals' decision not be followed by this Court? _____

If No, why didn't you raise this ground for relief in your direct appeal? _____

B. Ground Two: _____

(1) Supporting FACTS (state briefly without citing cases or law): _____

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(2) Did you raise this ground for relief in your direct appeal?

Yes ☐

No ☐

If Yes, why should the Court of Appeals' decision not be followed by this Court? _____

If No, why didn't you raise this ground for relief in your direct appeal? _____

If you have additional grounds for relief, attach extra pages. Set forth two subparagraphs for each additional ground for relief and answer each of questions (1) and (2) for each additional ground for relief.

13. **Timeliness of Motion.** Generally, you have one year from the date on which your conviction became final to file a motion under 28 U.S.C. § 2255. *See* 28 U.S.C. § 2255 para. 6. If your conviction became final more than one year ago, attach a page explaining why the statute of limitations should not bar your motion.

If you did not pursue a direct appeal, your conviction became final ten business days after the entry of written judgment. If you appealed but did not file a petition for *certiorari*, your conviction became final ninety calendar days after the Court of Appeals rendered its decision in your case. If you filed a petition for *certiorari*, your conviction became final on the date *certiorari* was denied or, if the Supreme Court heard your case, on the date it rendered its decision. *See generally Dodd v. United States*, 125 S.Ct. 2478 (2005); *Clay v. United States*, 537 U.S. 522 (2003). Your deadline for filing a motion under § 2255 is generally one year from the date your conviction became final. If that day is a weekend day or a holiday, you must file your motion on the next business day.

14. Give the name of each attorney who represented you in the following stages of the judgment(s) you challenge in this Motion:

(a) At change of plea hearing, if applicable:

(b) At trial, if applicable:

(c) At sentencing:

(d) On appeal:

Self-Represented ☐

(e) In any proceeding commenced after your appeal was decided:

Self-Represented ☐

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WHEREFORE, Defendant-Movant prays that the Court grant relief to which s/he may be entitled in this proceeding.

Signature of Attorney (if any)

Movant's Declaration (if not represented by counsel)

- A. I understand that I must keep the Court informed of my current mailing address and that my failure to do so may result in dismissal of this Motion without actual notice to me.
- B. I understand that submission of a false statement or answer to any question in this Motion may subject me to penalties for perjury. I, the Movant in this action, declare under penalty of perjury that I have read the above Motion and that the information contained in the Motion is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.
- C. This Motion was deposited in the prison system for legal mail, postage prepaid or paid by the prison, on

_____ [date].

Signature of Movant

Date Signed

Rev'd April 2009

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